

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

RATE ADJUSTMENT DUE TO EXTRAORDINARY
OR EXCEPTIONAL CIRCUMSTANCES

Docket No. R2013-11

REPLY COMMENTS OF AMERICAN BANKERS ASSOCIATION
(December 6, 2013)

The American Bankers Association (ABA), on behalf of its member banks, is pleased to provide the following reply comments to the U. S. Postal Regulatory Commission (PRC) in response to the United States Postal Service's (Postal Service) renewed request for a rate increase due to extraordinary or exceptional circumstances (exigent increase). The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its 2 million employees.

I. Electronic Diversion Prior To and After the Recession is a Greater Factor in Declining Mail Volume than Recession Related Diversion.

In its initial comments, the ABA pointed out that a 4.3% exigent increase above the Consumer Price Index (CPI) cap, in addition to the 1.6% CPI increase granted on November 21, 2013, would increase uncertainty for business that utilize the Postal Service and could lead to significant negative impacts in future use.¹ The legislative history of the Postal Accountability and Enhancement Act of 2006² (PAEA), which sought to limit the circumstances where the Postal Service could obtain a rate increase above the CPI cap *in an effort* to provide rate stability and predictability for mailers, also supports ABA's position.

¹ See Comments of American Bankers Association, PRC Docket No. R2013-11 (Nov. 26, 2013) at 3.

² Pub. L. No. 109-435, 120 Stat. 3198 (2006).

Additional comments filed with the PRC following the submission of the ABA's comments further strengthen and support the position that an exigent increase of 4.3% would harm the Postal Service by upsetting the cost-benefit analysis undertaken by mailers. The consequence of this upset would be further electronic diversion. ABA members have reported that increased electronic diversion during and after the 2007-2009 Recession was due to reasons other than the Recession. The comments filed by the National Postal Policy Council³ (NPPC) *et al.* and the MPA *et al.*⁴ offer additional evidence, including some from the Postal Service itself, that electronic diversion was increasing prior to, during, and after the Recession of 2007-2009. Specifically, the MPA comments include a catalog of comments made by the Postal Service, the Postal Service's Office of the Inspector General, Postal Service Consultants, the Government Accountability Office, and the PRC staff, all of which indicate that prior to, during, and after the Recession electronic diversion and substitution was accelerating.⁵

Further support for this position came from analysis and commentary from Professor Christian Lundblad who noted, "businesses and consumers alike—are growing increasingly comfortable with living and transacting business electronically, and that this growing comfort has resulted in substantial shifts from paper to electronic communication."⁶ Further, Professor Lundblad added that *increases in electronic and mobile applications for online banking have led to a decrease in the number of bill payments through the mail* as "the percentage of bills paid electronically increased from 35 to 56 percent from 2007 to 2012" with "virtually all of the drop in these volumes due to diversion, not to a decline in the total number of bills that households must pay each month."⁷ Taken together, the MPA concludes that these statements and evidence support

³ Comments of the National Postal Policy Council, the Major Mailers Association, and the National Association of Presort Mailers in Connection with the Attached Statement of Lawrence G. Buc, PRC Docket No. R2013-11 (Nov. 26, 2013).

⁴ Initial Comments of MPA—the Association of Magazine Media, Association for Postal Commerce, the American Catalog Mailers Association, Inc., Direct Marketing Association, Inc., Alliance of Nonprofit Mailers, Association of Marketing Service providers, Major Mailers Association, National Newspaper Association, Printing Industries of America, Quad/Graphics, Inc., R.R. Donnelley, Software & Information Industry Association/American Business Media, and Time, Inc., PRC Docket No. R2013-11 (Nov. 26, 2013).

⁵ *See id.* at 7-13 (cataloging various statements from 2010-2013 indicating the decline in mail volume due to electronic diversion).

⁶ Statement of Christian T. Lundblad, on behalf of the MPA, PRC Docket No. R2013-11 (Nov. 26, 2013), at 7.

⁷ *Id.* at 17-18.

the position that “the trend variables overwhelmingly reflect the acceleration of Internet diversion since 2007, not the effects of the 2007-2009 recession.”⁸

Similarly, the NPPC filed comments highlighting the results of surveys conducted of mailers to understand the impact of electronic diversion. Notably, the survey conducted for NPPC, which included a number of person to person interviews found “[n]o support for the proposition that the recession in and of itself caused increased electronic diversion. On the contrary, the evidence suggests that increased electronic diversion was independent of the recession.”⁹ The survey results also indicate that “[n]ot only are customers more accepting of electronic technologies and more comfortable in communicating with businesses electronically, postage has become such a large percentage of the cost of mailing that postage increases (particularly above-CPI increases) can actually increase the resources available to promote further diversion.”¹⁰ This is similar to information ABA members have reported—namely that increased diversion was independent of the recession.

These comments and the evidence supporting them raise very serious questions about the assumptions made by the Postal Service that the losses attributed to electronic diversion following the Recession were “due to” the extraordinary and exigent circumstance of the Recession.¹¹ Instead, the arguments and evidence track the findings of Congress that predate the passage of the PAEA, namely that the Postal Service faced a significant challenge posed by electronic diversion and that this diversion is based upon technological advances, and not the extraordinary and exceptional circumstance of the 2007-2009 Recession. Accordingly, electronic diversion should be seen as a natural technological evolution that has impacted many industries and would have occurred independent of short-term events, such as a recession.

⁸ Initial Comments of MPA, *supra* note 4, at 28.

⁹ Comments of the National Postal Policy Council, *supra* note 3, at 4.

¹⁰ *Id.* at 7.

¹¹ *See*, Further Statement of Thomas E. Thress on Behalf of the United States Postal Service, PRC Docket No. R2010-4R (Sept. 26, 2013) at 7.

II. The Recession Constitutes A One-Time Extraordinary and Exigent Circumstance that Ended in 2009 and Only Warrants a One-Time Exigent Rate Increase.

The ABA’s initial comments also addressed the fact that the Postal Service’s request for an exigent rate increase failed to include a defined endpoint for the proposed rate increase as required by PRC Rule 3010.61(a)(6). While the failure to comply with the regulations is not necessarily a fatal error in the Postal Service’s filing, as previously reasoned, this absence of a defined endpoint calls into question “whether the extraordinary and exception circumstances are in fact a one-time occurrence or a continued ongoing change to the Postal Service business model.”¹² Even assuming that the exigent increase was warranted due to mail volume losses following the Recession, the Postal Service is limited by statute to an increase that is “reasonable and equitable and necessary.”¹³

The Postal Service has argued that it intends to have the proposed exigent rate increase “live on into the future.”¹⁴ While the Postal Service argues that the exigent increase would only recoup \$1.78 billion in additional revenue annually, the lack of a defined endpoint for the exigent increase sought raises the possibility that the Postal Service could in fact overcorrect for the losses attributed to the Recession.¹⁵ The possibility of an overcorrection calls into question whether the requested exigent increase were in fact “reasonable and equitable and necessary” as required by the statute.

Such an outcome also contradicts the legislative intent of the narrow extraordinary and exceptional circumstances exception to the CPI cap. As previously noted, the legislative history clearly shows that Congress enacted the PAEA, and the included CPI cap, to force the Postal Service to address circumstances such as electronic diversion through cost savings and efficiencies.¹⁶ However, if the PRC were to grant the exigent increase in perpetuity—as envisioned by the Postal Service—it would create an end run around the CPI cap allowing the Postal Service to build-in a price increase designed to compensate for the fundamental changes

¹² See Comments of American Bankers Association, *supra* note 1, at 6.

¹³ 39 U.S.C. § 3622 (d)(1)(E) (2006).

¹⁴ Transcript of Proceedings before the Postal Regulatory Commission, PRC Docket No. R2013-11 Vol. 2 (Nov. 20, 2013) at 186.

¹⁵ See Initial Comments of MPA, *supra* note 4, at 50.

¹⁶ Senate Committee Report on S.2468, S. Rep. 108-318, page 2.

to the mail system due to technological advances, all the while masked as a response to an extraordinary or exceptional circumstance. This would greatly expand the scope of the narrow exception to the CPI cap and perhaps end up swallowing the CPI cap itself.

For the foregoing reasons, an occurrence of an over-recovery would seem probable, which would violate the reasonable and equitable provisions of the statute. Moreover, such an overcorrection would also appear to violate the legislative intent of the statute. The PRC should deny the exigent increase.

At a minimum, if the PRC grants even a portion of the exigent rate increase despite the evidence and legislative history, the PRC should limit the exigent increase to a finite period of time with a defined endpoint, with rates returning to the pre-exigent levels at the end of the chosen time period.¹⁷ Alternatively, the PRC should limit the recovery to a defined dollar amount to ensure that any exigent increase is “reasonable and equitable and necessary” as required by the statute.

Conclusion

The PRC should deny the Postal Service’s exigent increase because evidence shows that the losses the Postal Service seeks to attribute to the Recession were in fact the result of a trend toward electronic diversion that started prior to the Recession. Alternatively, should the PRC find it appropriate to grant part of the Postal Service’s exigent increase request, the PRC should limit the exigent increase to a finite period of time or a limited dollar amount instead of allowing the Postal Service to build a price increase into the rate base in perpetuity.

¹⁷ Despite the fact that the exigent increase mechanism has not been used before, there is some precedent for returning rates to normal following an emergency increase. See United States Postal Regulatory Commission, History of First-Class Stamp Rates *available at* [http://www.prc.gov/\(S\(g532al30p52gnjrc2bfk33n\)\)/PRC-DOCS/aboutprc/offices/PAGR/stamphistory.pdf](http://www.prc.gov/(S(g532al30p52gnjrc2bfk33n))/PRC-DOCS/aboutprc/offices/PAGR/stamphistory.pdf) (showing a reduction of first-class stamp rates following an increase during World War I).

Respectfully Submitted,

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December 6, 2013